

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1449

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-vs-

CHARLES P. GREZO, JOSEPH D'AGOSTINO,
SAMUEL EBARE and RICHARD MICHAEL BEACH,

Defendants-Appellants.

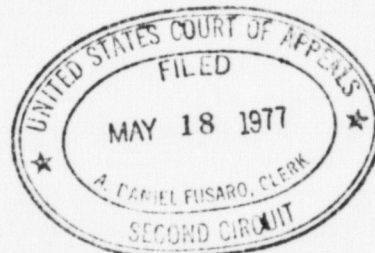
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Docket No. 76-1449

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
NEW YORK

APPENDIX FOR APPELLANT - GREZO

NORMAN A. PALMIERE, ESQ.,
of counsel

PALMIERE, PASSERO & CRIMI
Attorneys for defendant-
appellant Grezo
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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

75-68-20

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.:
US.		Hon. James M. Sullivan Jr.
SAMUEL L. EBARE 115 Ruby Road Liverpool, N. Y.	CHARLES P. GREZO 165 E. Genesee Street Auburn, N. Y. 13021	
RICHARD M. BEACH <i>402 Highland St Signature Ry</i>	LEWIS M. CAMERANO 711 E. Twain Las Vegas, Nevada	
JOSEPH P. D'AGOSTINO 701 Boulevard Street Mattydale, N. Y.	RAYMOND C. CZERWINSKI 322 Apple Street Syracuse, N. Y.	For Defendant:
		Ebare - Paul R. Shanahan Beach - D. Weinstein, Asgd. D'Agostino - P. Shanahan final Grezo - Norman Palmiere Camerano - Gerber <i>Rydell</i> Czerwinski - Gerber <i>1035</i> <i>Papers</i>

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation Illegal Gambling Business Title 18 USC	Docket fee				
Sec. 317, 1955, 1952 and 2					

DATE	PROCEEDINGS
1975	
July 2	Filed sealed Indictment in vio T- 18 USC §371, 1955, 1952 and 2 Illegal Gambling Business. issued warrants for Ebare and Beach to remain sealed untill Ebare and Beach are arrested . JS 2 5 counts
7/14/75	Filed Appearance Bond - Ebare
"	Filed Bail Reform Act Form 2 - Ebare
7/17/75	Filed Appearance Bond - Beach
"	Filed Bail Reform Act Form 2 - Beach
7/18/75	Filed Notice of Readiness for Trial
8/5/75	Defendants Ebare, Beach, D'Agostino, Grezo, Camerano and Czersinski are arraigned and plead not guilty. Motions to be made returnable August 26, 1975 at Auburn. Papers to be filed and served on or before August 14, 1975 and response on or before August 21st. Bail continued on Ebare and Beach. Defendants D'Agostino, Grezo, Camerano and Czerwinski are released on own recognizance after executing forms
8/6/75	Filed Financial Affidavit and CJA Form 20. for Richard Beach
8/8/75	Filed copy of letter dated 8/6/75 from Special Attorney Jeffrey Fisher to Atty. David Weinstein.
8/8/75	Filed copy of letter dated 8/6/75 from Special Attorney Jeffrey Fisher to Attorney Edward Gerber

DATE

PROCEEDINGS

8/8/75	Filed copy of letter dated August 6, 1975 from Special Attorney Jeffrey Fisher to Attorney Norman Palmieri.
8/8/75	Filed copy of letter dated August 6, 1975 from Special Attorney Jeffrey Fisher to Attorney Paul R. Shanahan.
8/11/75	Filed four copies of correspondence dated August 8, 1975 from Jeffrey Fisher to Attys. Palmieri, Weinstein, Shanahan & Gerber re: Pen Register on Wiretap Orders.
8/15/75	Filed Notice of Motion, supporting affidavit and exhibits returnable 8/26/75 at Auburn for an Order to inspect minutes of proceedings before Grand Jury, suppressing any and all wire tape orders, etc., re Richard
8/15/75	Filed Order and Supporting Affidavit permitting Samuel L. Ebare to go to Florida to dispose of trial of said criminal proceeding, to return not later than 9/1/75.
8/26/75	Deft. Beach-Motion to inspect grand jury minutes - denied. Motion for Bill of Particulars - granted in part and denied in part Motion to Vacate search warrant - moot Motion to suppress - referred to trial Judge. Gov't. has 20 days to supply material to defendant.
	Deft. Charles Grezo - Motion for Discovery & Inspection - Motion granted in part and denied in part. Motion for delivery to the deft. of all evidence favorable to him (Brady Motion).-denied but Judge suggests that the Gov't. attempt to make Brady Material available at earliest possible time. Motion for Bill of Particulars and Motion re: Voice identification - denied. Motion to Suppress wire Communications - Deferred to trial Judge. Government to make information available to deft. in 20 days.
8/29/75	Filed Order signed by Judge Port re: Richard Michael Beach.
8/29/75	Filed Order signed by Judge Port re: Charles P. Grezo
8/29/75	Filed Omnibus Motions re: Charles P. Grezo
8/29/75	Filed Government's Response to Deft's Motions - Grezo
8/29/75	Filed Government's Response to Defendant's Motions
9/4/75	Filed Government's Amended response to Deft.'s motion for Discovery-Bea
9/5/75	Filed Bill of Particulars - Deft. Grezo
11/12/75	Over the term - Utica session - time excluded.
12/22/75	Filed Notice of Supplemental Motion, Affidavit for Deft. Grezo returnable January 12 at Syracuse., for an order suppressing deft. telephone conversations, etc.
1/12/76	Motion to suppress for deft. Grezo- referred to trial Judge.
1/19/75	Filed Consent to change attorney for Lewis Camerano sub. Joseph A. Rydelek for Edward Gerber.
1/21	Filed Notice of Substitution of Attorney for Deft. D'Agostino.
1/21/	Filed Notice of Appearance for Deft. Jos. D'Agostino
1/30	Filed Government's Requested Points for Charge.
1/17/76	Matter called to trial. Mr. Fisher states issues on suppression can be decided by Court on papers submitted and case ready for trial. Mr. Weinstein & Palmiere state that issues must be decided must be decided prior to trial and those suppression issues are more complex than the Govt. indicates. Judge MacMahon states this case is not ready for trial and that it is adjourned from this session of Court, and that Counsel for Govt. and defense must submit their suppression motions to the next presiding Judge at least one month prior to the scheduled date for trial and make him aware that these motions must be decided prior to trial.
2/17/76	Filed Memorandum of Hon. MacMahon

U.S. v. D'Agostino, Beach, et al

DATE

PROCEEDINGS

2/25/76	Filed Memorandum of Motion to Suppress Evidence Obtained by execution of wire tap orders dated 12/19/74 and 1/11/75 by Attorney Palmiere for deft. Grezo.
2/25	Filed copy of affidavits for tap on Collocca telephone in Oswego.
3/2/76	Over to Auburn - time excluded.
3/4/76	Letter from Attorney Paul Shanahan indicating that it is his desire to join in on the motion of suppression already made by deft. Grego on behalf of deft. Ebare.
3/8/76	Filed letter from Attorney Rydelek indicating that he joins in the motion to suppress on behalf of def deft. Louis M. Camerano.
3/11/76	Filed letter from Attorney Andrew Pappas advising court the he joins in the suppression motion pending before Judge MacMahon on behalf of deft. Czerwinski.
3/16/76	Filed letter from Attorney John R. Rinaldi indicating his desire to join in on suppression motion pending before Judge MacMahon on behalf of Deft. D'Agostino.
5/5/76	Ready
6/2	Filed Opinion of Hon. Lloyd F. MacMahon, USDJ denying all defendants' motions to suppress all wiretape evidence and denying defendant Beach's motion to suppress items seized pursuant to search warrant.
5/28/76	Motion for suppression of evidence- decision reserved until 6/1/76.
6/17	Filed Government's Trial Brief
6/17	Filed Government's Request to Charge
6/17	Filed Government's Thirty-five hundred material.- In Utica Vault
6/21	Trial - Jury drawn and sworn. 2 Alternates drawn.
6/22	Trial Continued.
6/23	Trial Continued.
6/24	Trial continued
6/25	Trial Continued. All attorneys move to dismiss on grounds stated- denied.
6/28	Trial continued.
6/29	Trial continued. Judge MacMahon charges the Jury. Guards for jury sworn in. Alternate juror is excused. 11:45 jury retires. 10:00 PM the jury comes into the courtroom with a verdict. Ebare Guilty on Counts 1 & 2; Beach Not Guilty on Count 1, Guilty on Count 2; D'Agostino Guilty on Counts 1,2,3 and 5 and Not Guilty on Count 4 Grezo Not Guilty on Counts 1,3,4,5 and Guilty on Count 2; Camarano Not Guilty on Count 1 and 4 Guilty on Counts 2,3 and 5; Czerwinski Guilty on Counts 1 and 2. All attorneys moves to set aside verdict- Denied. Mr. Fisher moves to have Ebare and Beach incarcerated until Sentencing-Denied. Presentence investigation ordered. Defts. continued on present bail status. Sentencing set for Sept. 16, 1976 at 10:00 a.m.
6/19/76	Filed Order and Application for Order Requiring Testimony
6/24/76	Filed Memorandum of Law by Atty. Rydelek for Deft. Camerano
6/29/76	Filed Court Exhibit 1, 2,3 and 4. Filed Index of 3500 Material
6/30	Filed Order and Petition for Camerano to travel to Illinois and Las Vegas and to return for sentencing, signed by Judge MacMahon
7/2	Filed Deft. Czerwinski's request to charge with endorsement of Judge MacMahon "Denied in this form but I will charge the substance of Guzek teaching on Count 2, but not on Count 1.
7/2/76	Filed Gov't. Exhibit 9-16 received in Evidence-tapes (In Utica Vault)
7/2/76	Filed Gov't & Deft. Exhibits & Receipt for money returned to Marshal's Office 7/2/75. (In Utica Vault).

DATE

PROCEEDINGS

7/20/76	Filed Defendant's Grezo's Request to Charge.
7/22/76	Filed Proposed Jury Questions by Atty. Palmiere for Charles Grezo
9/17/76	Deft. Lewis Camerano is advised of his right to speak in his own behalf, deft. declines, his attorney speaks. The defendant is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of six(6) months on each of Counts 2,3, and 5, the sentence to run concurrently with each other. Execution of sentence is suspended, and the deft. is placed on probation for a period of six(6) months, subject to the provisions of the standing probation order of this court. Deft. is advised of his right to appeal.
9/17/76	Filed Judgment - copies U. S. Probation Judge MacMahon
9/17/76	The Court advised deft. Czerwinski of his right to speak in his own behalf, deft. declines, his attorney speaks. The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) months on each of Counts 1 and 2, the sentences to run concurrently with each other. Execution of sentence is suspended, and deft. is placed on probation for a period of six (6) months, subject to the provisions of the standing probation order of this court. Deft. is advised of his right to appeal.
9/17/76	Filed Judgment - copies U. S. Probation Judge MacMahon
"	Deft. Grezo is advised of his right to speak in his own behalf, deft. declines, his attorney speaks. The deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of six(6) months and is fined \$5,000.00 on Count 2. Deft. is to stand committed until the fine of \$5,000.00 is paid. Motion of Atty. Palmiere execution of sentence is stayed pending appeal. Deft. is continued on his own recognizance. Deft. is advised of his right to appeal.
9/17/76	Filed Judgment - execution of sent. stayed pending appeal. Judge MacMahon.
9/17/76	Deft. D'Agostino is advised of his right to speak in his own behalf, deft. speaks, his attorney speaks. The deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of six (6) months and is fined \$5,000.00 on each of Counts 1, 2, 3 and 5, the prison sentence and the fine imposed on each count to run concurrently with each other. Deft. is to stand committed until the total fine of \$5,000.00 is paid. On motion of Atty. John R. Rinaldi execution of sentence is stayed pending appeal. Deft. is continued on his own recognizance. Deft. is advised of his right to appeal.
9/17/76	Filed Judgment - execution of sent. stayed pending appeal. Judge MacMahon
9/17/76	Deft. Beach is advised of his right to speak in his own behalf, deft. declines, his attorney speaks. The deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of one year and one day, on Count 2. On motion of Att. Weinstein execution of sentence is stayed pending appeal. Deft. is continued on bail. Deft. is advised of his right to appeal.
9/17/76	Filed Judgment - execution stayed pending appeal. Judge MacMahon
9/22/76	Filed Notice of Appeal for defendant Charles P. Grezo
9/24/76	Filed Notice of appeal for deft. Joseph D'Agostino
9/28/76	Filed Notice of Appeal for deft. Richard Michael Beach.

In the United States District Court
For the Northern District of New York

UNITED STATES OF AMERICA,

Appellee,

VS

CHARLES P. GREZO,
also known as "Sonny",

Defendant-
Appellant.

NOTICE OF APPEAL

Criminal No. 75-CR-86

NOTICE IS HEREBY GIVEN, that Charles P. Grezo, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment convicting him of a violation of Section 1955 of Title 18 of the United States Code entered in this action on the 17th day of September, 1976, and from each and every part thereof.

DATED: September 21, 1976

Yours, etc.,

PALMIERE, PASSERO & CRIMI
Attorneys for Defendant, Grezo
Norman A. Palmiere, of counsel
Office & P. O. Address
Suite 440 One Main East
Rochester, New York 14614

TO: CLERK, UNITED STATES DISTRICT COURT
Northern District of New York
Federal Building
Utica, New York 13503

PALMIERE, PASSERO
AND CRIMI
ATTORNEYS AT LAW
40 WILDER BLDG.
ROCHESTER, N. Y.
14614

TO: UNITED STATES ATTORNEY
for the Northern District of New York
Federal Building
Syracuse, New York 13202

UNITED STATES DEPARTMENT OF JUSTICE
Jeffrey C. Fisher, Special Attorney
921 Genesee Building
Buffalo, New York 14202

PALMIERE, PASSERO
AND CRIMI
ATTORNEYS AT LAW
440 WILDER BLDG.
ROCHESTER, N. Y.
14614

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Term

-vs-

CR
No. 75-86

SAMUEL L. EBARE,
also known as "Sam"
JOSEPH T. D'AGOSTINO,
also known as "Joey"
RICHARD MICHAEL BEACH,
also known as "Harpo"
CHARLES P. GREZO,
also known as "Sonny"
LOUIS M. CAMERANO
RAYMOND CZERWINSKI
also known as "Baldy"

Vio. Title 18, U.S.C.,
Sections 371, 1955, 1952 and 2

Filed:

COUNT I

The Grand Jury Charges:

That continuously throughout the period between September 1, 1973 and June 26, 1975, the exact dates being to the Grand Jury unknown, in the Northern District of New York and elsewhere, James V. Colloca and Leon Cook, named herein as co-conspirators but not indicted as defendants, and numerous other persons whose exact identities are to the Grand Jury unknown, and SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, did unlawfully and knowingly conspire, combine and agree together and with each other, to conduct, finance, manage, supervise, direct and own an illegal gambling business, that is, a sports bookmaking operation and parlay business which violated the provisions of Article 225 of the Penal Law of the State of New York and was therefore in violation of Sections 1955 and 2 of Title 18 of the United States Code:

OVERT ACTS

And, during the period aforesaid, the said defendants committed, among others, the following overt acts in furtherance of the said conspiracy and in order to effectuate the object and purpose thereof:

(1) On or about October 30, 1974, SAMUEL L. EBARE and James V. Colloca met in The Chart Room, Oswego, New York, and had a discussion concerning a debt;

(2) On or about November 5, 1974, JOSEPH T. D'AGOSTINO spent approximately one and one-half hours at the residence of Leon Cook at 214 Gulf Road, Syracuse, New York, conducting the aforesaid illegal gambling business over Cook's telephone;

(3) On or about December 21, 1974, JOSEPH T. D'AGOSTINO had a telephone conversation with CHARLES P. GREZO about matters relating to the operation of the aforesaid illegal gambling business, and in which D'AGOSTINO accepted layoff wagers from GREZO;

(4) On or about January 3, 1975, JOSEPH T. D'AGOSTINO distributed line (or odds) information over the telephone to RAYMOND CZERWINSKI, and they discussed other matters relating to the operation of the aforesaid illegal gambling business;

(5) On or about January 4, 1975, RICHARD MICHAEL BEACH and JOSEPH T. D'AGOSTINO had a telephone conversation in which they discussed the status of the aforesaid illegal gambling business concerning a particular game, and during which D'AGOSTINO gave BEACH the line (or odds) information on numerous sporting events;

(6) On or about January 5, 1975, LOUIS M. CAMERANO telephoned JOSEPH T. D'AGOSTINO from Las Vegas, and CAMERANO gave D'AGOSTINO line (or odds) information on numerous sporting events for use in the aforesaid illegal gambling business;

BEST COPY AVAILABLE

(7) On or about January 6, 1975, JOSEPH T. D'AGOSTINO and SAMUEL L. EBARE had a telephone conversation in which SAMUEL L. EBARE gave JOSEPH T. D'AGOSTINO instructions with respect to the payoff of a winning bettor in the aforesaid illegal gambling business, and they arranged a meeting.

All of which was in violation of Section 371 of Title 18 of the United States Code.

COUNT II

The Grand Jury Further Charges:

That, continuously from approximately September 1, 1973 through June 26, 1975, the exact dates to the Grand Jury being unknown, in the Northern District of New York and elsewhere, SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, together with others who are both known and unknown to the Grand Jury, unlawfully did conduct, finance, manage, supervise, direct and own an illegal gambling business in the form of an unlawful sports bookmaking operation and parlay business which violated Article 225 of the Penal Law of the State of New York, and all of which was in violation of Sections 1955 and 2 of Title 18 of the United States Code.

COUNT III

The Grand Jury Further Charges:

That, on or about January 4, 1975, at approximately 12:28 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish,

carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity, all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

COUNT IV

The Grand Jury Further Charges:

That, on or about January 4, 1975, at approximately 5:00 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sports events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform

and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

COUNT V

The Grand Jury Further Charges:

That, on or about January 5, 1975, at approximately 12:30 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities, between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce,

procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

JAMES M. SULLIVAN, JR.
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK

A TRUE BILL:

FOREMAN

ADDITIONAL CHARGE NUMBER ONE ON BEHALF OF
DEFENDANT GREZO.

(Independent bookmakers do not conduct each others gambling
business in the absence of a showing of interdependence.)

If from all of the evidence you conclude that any of the defendants
in this case are bookmakers but having their own private customers separate
and apart from those of the gambling business, which the government says was
being conducted in this case, I charge that you can not convict that defendant
under either counts one or two merely because he has placed or transferred
bets to the operators of the gambling business in question. In order to convict
that defendant you must conclude beyond a reasonable doubt that - that defendant
and those defendants who you believe were the operators, directors, conductors,
financers, supervisors, or owners of the gambling business which is the subject
of this indictment, shared a mutual relationship servicing their respective
business interests.

In this connection I charge you that the mere placing of lay-off bets
by one bookmaker operating his own business with anothers gambling enterprise,
is not sufficient to weld the two businesses together as one gambling business
unless both bookmakers have agreed or do in fact exchange or transfer lay-off
bets each with the other. Lay-off betting by one bookmaker with a second
establishes dependence by the former on the latter at least to the extent that
the second help the former in reducing his risk and maintaining a profit from
his gambling business. But the absence of transferring lay-off bets by the
second bookmaker with the first, would, at least to this extent negate any

*maximization - any OK for 5 to be convicted if he
gives lay offs on a regular basis*

inference that the first bookmaker was helping the second bookmaker to reduce his risk and maintain a profit.

(see: United States v. Guzek, 527 F2d 552, at 558, 8th Cir., 1975)

ADDITIONAL CHARGE NUMBER TWO
(Theory of Defense to Sec. 1952 of Title 18)

The fact that the defendant, Charles Grezo, knew that the "LINE" or "odds" that he received from D'Agostino were obtained by D'Agostino's use of an interstate telephone facility and that he may have asked or even directed D'Agostino to do so, is not sufficient to convict Grezo under Sec. 1952 of Title 18 if you are not convinced beyond a reasonable doubt that his request or direction was with an intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on of an illegal gambling activity.

In this connection I charge you that if Grezo requested or sought this "LINE" information with the intent of using the same to make bets in ^{the GALACT} a bettor, customer or player, as I previously defined those terms for you, then I charge you that Grezo could not violate Sec. 1952 of Title 18 as a principal or aider and abettor.

US v. Alfonso-Perez
- Ex - (dec. 5-17-76)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

75 CR 86

SAMUEL EBARE, ET AL.

CHARGE TO THE JURY
DELIVERED BY THE
HONORABLE LLOYD F.
MAC MAHON, JR.,
UNITED STATES DISTRICT JUDGE,
SITTING BY DESIGNATION

JUNE 29, 1976
AUBURN, NEW YORK

(19)
20
21
in the afternoon
before the charge on
separated in the
Hudson

1 THE COURT: Ladies and gentlemen
2 of the Jury: It now becomes my function at
3 this stage of the trial to instruct you on
4 the law that governs your decision in this
5 case. Throughout their closing arguments,
6 all of the lawyers here and there instructed
7 you on the law. When they did that, they
8 were out of their province. I am the ex-
9 clusive judge of the law. I permitted them
10 to tell you something about the law because
11 in this kind of a case it is almost impossible
12 to discuss the evidence without relating it
13 to the legal issues involved.

14 But you must bear in mind that
15 if what they said about the law differs from
16 what I say about it, you must reject what
17 they said and apply the law as I give it to
18 you.

19 Now, just as I am the exclusive
20 judge of the law, you and you alone are the
21 exclusive judges of the facts. You and you
22 alone decide what witnesses you will believe,
23 and you and you alone decide how much of a
24 witness's testimony you will believe and how
25 much of it you may wish to reject. You and

1 you alone decide what weight, what value,
2 what conclusions, what inferences that you
3 draw from the evidence and, of course, ul-
4 timately you decide the guilt or innocence
5 of each defendant on each count in this
6 indictment.

7 Now, you are not to conclude
8 from my rulings that I have made throughout
9 this trial, or any questions that I may have
10 asked, that I have any opinion one way or the
11 other as to whether any defendant is guilty
12 or not guilty of any of the charges made
13 against him in this indictment. That decision,
14 as I have told you earlier, is exclusively
15 up to you.

16 Now, how do you go about finding
17 the facts? Finding the facts is merely a
18 process by which you, the jury, consider the
19 exhibits which have been received in evidence.
20 Consider the testimony of all of the witnesses,
21 both on direct and on cross-examination. Sift
22 out what you believe, weigh it in the scale
23 of your reasoning powers and common sense,
24 and draw such conclusions as your good, every-
25 day common sense tells you that the evidence

1 supports and justifies and decide just where
2 the truth lies in this case.

3 Now, in this connection all
4 evidence is of two general types; direct
5 evidence and circumstantial evidence. Evidence
6 is direct when the facts are shown by exhibits
7 which are admitted into evidence, or when
8 sworn to by witnesses who have full knowledge
9 of them from something that they have learned
10 through the exercise of one of their five
11 fundamental senses, such as sight, hearing,
12 taste, smell and touch.

13 Circumstantial evidence simply
14 means the drawing of a logical conclusion
15 from other facts that are shown by direct
16 evidence.

17 The classical example of
18 circumstantial evidence is in Daniel Defoe's
19 story about Robinson Crusoe, when Crusoe
20 saw the footprint on the sand and knew that
21 it was not his own. The only logical con-
22 clusion to draw was that another human being
23 was on the island.

24 Now, not all circumstantial
25 evidence calls for such a compelling and

1 absolutely certain conclusion. But I am sure
2 that you are all familiar with the process.
3 We use it in our daily lives. We draw con-
4 clusions based on our common sense and ex-
5 perience from other connected facts and the
6 process is no different here.

7 Now, it is your memory of the
8 evidence that controls here, not the way I
9 remember it and not the way counsel remembers
10 it and I have no intention here of reviewing
11 this evidence. I know that it is fresh in
12 your mind. If your memories of the evidence
13 squares with what the lawyers told you yesterday
14 as their memory of it, you may accept what they
15 say. But if you have a different recollection
16 of the evidence you are bound by your oath to
17 reject what was said, and rely on your own
18 memory.

19 Now, when I say your own memory,
20 I mean your collective memory. One of you can
21 help another to stimulate his memory, to help
22 refresh his recollection. Sometimes jurors
23 are only out a few minutes, and following the
24 script that they see on TV every night, some
25 jurors send in a note, they send in a note

1 that they want to have the testimony of the
2 witness A or witness B, or sometimes four or
3 five witnesses read.

4 Now, in that connection, there is
5 no transcript of this testimony at all. It
6 all rests in those stenotype notes which you
7 see Mr. Sheffer taking there, and it takes
8 time to find it. We can do it if it is neces-
9 sary, and if any of you strongly feel and
10 send in a note through your foreman, that you
11 want the testimony read, we can do it. But
12 it takes time, and before you resort to that
13 process, please try and help stimulate and
14 refresh each other's memory. It is your
15 collective memory of the evidence that
16 controls.

17 Now, William L. Holmes, a Special
18 Agent of the FBI, was allowed to testify as
19 an expert on the bookmaking or gambling
20 business. An expert may testify and give
21 his opinion on a subject concerning which he
22 has some special knowledge. This is allowed
23 on the theory that the advice of one ex-
24 periented and versed in technical or a
25 special subject will help the jurors in

1 reaching their decision. You may consider
2 the experts qualifications and opinion, and
3 weigh his reason, if any, and give his
4 testimony such weight as you feel it
5 deserves. An expert opinion is purely ad-
6 visory and you may reject it entirely in your
7 judgment if the reasons given are not con-
8 vincing. That determination rests with you.

9 Now, one of our most important
10 functions is to decide which witnesses you
11 will believe, and this is so as to every
12 witness, whether called by the government,
13 whether a government agent or whether a
14 witness called by the defense.

15 You are not to be influenced by
16 the number of witnesses called, or by the
17 length of the trial. You are concerned not
18 with the quantity of the evidence, but with the
19 quality of the evidence. The first test which
20 you should apply in determining the trust-
21 worthiness of a witness is to measure what he
22 says against your plain, everyday, common sense.
23 You are not bound to believe unreasonable
24 statements, or to accept testimony that defies
25 your common sense or insults your intelligence,

1 just because the statements are made under
2 oath in a public courtroom.

3 You saw the witnesses in this
4 case. In deciding whether to believe a
5 witness you should consider his conduct and
6 his manner on the stand. I saw you watching
7 these witnesses with particular care as
8 they were testifying. Obviously, you were
9 sizing them up. How did the witness impress
10 you? Was the witness being frank with you?
11 Was his version of the evidence straight-
12 forward? Was he trying to conceal or hold
13 back the testimony? Was he just parroting
14 answers? Does he have any motive to testify
15 falsely? Is he interested in any way in the
16 outcome of this case? How strong or weak
17 was his memory of important events? Did he
18 forget the unforgettable?

19 In short, can you rely on him?
20 Can you trust him? Was he hostile or friendly
21 toward either side in this case?

22 You ought to consider his op-
23 portunity to know the facts about which he
24 testified and the probability or improbability
25 of what he said in light of the totality of

1 the circumstances here. How does his testimony
2 add up when considered with all of the other
3 evidence? How far does his story check out
4 with the recordings and with the documentary
5 evidence? Are there any inconsistencies in
6 his testimony and, if so, how important are
7 they?

8 Now, if you find that any witness
9 has deliberately and wilfully lied with respect
10 to any material fact in his testimony offered
11 at this trial, you may follow either one of
12 two courses: You may accept as much of the
13 witness' testimony as you believe, or you may
14 reject, if you wish, his entire testimony.

15 Now, none of the defendants took
16 the stand and testified in this case. A
17 defendant is not required to take the stand
18 and testify in his own behalf. He has no
19 burden of proof whatever to sustain in this
20 case. Each defendant has denied the charges
21 made against him by his plea of not guilty,
22 and he is presumed to be innocent. The fact
23 that he has not testified cannot be taken
24 into consideration by you in any manner. You
25 may not permit that fact to weigh in the

1 slightest degree against the defendant, nor
2 should that fact even enter into your dis-
3 cussions or your deliberations in any way.

4 Now, before discussing the crimes
5 charged here, I want to remind you that an
6 indictment is a mere accusation. It is not
7 evidence of the truth of the charge made and
8 you are to draw no inference of guilt from
9 the mere fact that the defendant has been
10 indicted. An indictment simply means that
11 the defendant has been accused of a crime
12 and, as I told you earlier, each defendant
13 here has denied the charges made against him
14 by his plea of not guilty.

15 He has no burden of proof whatever
16 to sustain in this case. He is under no
17 obligation to produce any witnesses. He is
18 presumed to be innocent, and this presumption
19 of innocence continues throughout the trial
20 and during the deliberations of the jury.
21 This presumption of innocence is overcome
22 when and only when the government establishes
23 the guilt of the defendant beyond a reasonable
24 doubt.

25 Now, what do I mean by beyond a

1 reasonable doubt? As the phrase implies, a
2 reasonable doubt is a doubt that is based
3 upon reason, a reason which appears in the
4 evidence or in the lack of evidence. It is
5 not some vague, speculative, imaginary in-
6 conceivable doubt, nor a doubt based upon
7 emotion, sympathy, or prejudice, or upon what
8 some juror might regard as an unpleasant duty.

9 The government is not required to
10 prove a defendant guilty beyond every con-
11 ceivable or possible doubt. Nor to an
12 absolute or mathematical certainty, because
13 such measure of proof is usually impossible
14 in human affairs.

15 You should review all of the
16 evidence as you remember it. Sift out what
17 you believe. Discuss it, and analyze it and
18 compare your view of the evidence with your
19 fellow jurors. If that process produces a
20 solemn belief, or conviction in your mind such
21 as you would be willing to act upon without
22 hesitation if this were a matter of importance
23 to yourself, then you may say that you have
24 been convinced beyond a reasonable doubt.

25 On the other hand, if after going

1 through that process your mind is wavering,
2 or is so uncertain that you would hesitate
3 before acting if this were an important matter
4 of your own, then you have not been convinced
5 beyond a reasonable doubt, and your verdict
6 must be not guilty.

7 Now, the indictment in this
8 case contains five counts. Each of those
9 counts charges a separate offense or crime,
10 and each count must be considered and decided
11 by you separately.

12 The indictment names six defend-
13 ants, all of whom are on trial before you.
14 They are Samuel Ebare, also known as "Sammy";
15 Joseph D'Agostino, also known as "Joey";
16 Richard Michael Beach, also known as "Harpo";
17 Charles B. Grezo, also known as "Sonny"; Louis
18 M. Camerano; and Raymond Czerwinski, also
19 known as "Baldy."

20 Now, the guilt or non-guilt of
21 each defendant must be determined by you
22 separately as to each count in which he is
23 named in this indictment. Although, as I
24 will explain to you shortly, in considering
25 a defendant's guilt, or a defendant guilty or

1 not guilty, you may have to determine the
2 nature of the participation, if any, of other
3 persons, and this is particularly true when I
4 come to discuss Count II, and when we discuss
5 Count I.

6 Now, in the determination of
7 guilty or not guilty, you must bear in mind
8 that guilt is personal. There is no such
9 thing under our system of justice as guilt by
10 mere association. The guilt or non-guilt of
11 the defendant on trial before you must be
12 determined separately with respect to him,
13 solely on the basis of the evidence presented
14 against him or on the lack of evidence. Let
15 us turn to the specific charges now against
16 these defendants, and we will first discuss
17 Count II, because all of the remaining counts
18 are based on the legal principles and concepts
19 which apply to Count II.

20 Count II of the indictment
21 charges each of the defendants on trial with
22 violating the law of the United States, which
23 makes it a crime for anyone to conduct,
24 finance, manage, supervise, direct or own all
25 or part of an illegal gambling business.

1 In order to convict the defendant
2 whom you are considering on Count II, the
3 government must prove the following three
4 facts beyond a reasonable doubt: First, that
5 the gambling business must be in violation of
6 the law of the State of New York.

7 Secondly, that it must have five
8 or more persons involved in its conduct, and
9 third, it must be in substantially continuous
10 operation for more than 30 days, or have a
11 gross revenue of \$2,000 or more in a single
12 day.

13 Now, the first fact which the
14 government must prove beyond a reasonable
15 doubt is that the business which was being
16 operated was an illegal gambling business.
17 The term "an illegal gambling business" means
18 a business which is a violation of the law of
19 the State of New York. There is no dispute
20 here that the sports bookmaking operation and
21 parlay business involved operated in the
22 Northern District of New York and elsewhere.

23 Now, the New York law provides
24 that a person is guilty of promoting gambling
25 in the second degree when he knowingly

1 advances or profits from unlawful gambling
2 activity. You will note that I have said
3 that a defendant must knowingly advance for
4 profit from illegal gambling activity. The
5 indictment charges that the defendant acted
6 unlawfully and knowingly. Knowingly does
7 not mean that the defendant must be aware
8 that his conduct is criminal or that it
9 violates either state or federal law. It
10 simply means that he must have know what he
11 was doing, that he was acting voluntarily,
12 deliberately and on purpose, and not because
13 of mistakes, accident, carelessness or other
14 innocent reason.

15 Unlawfully or illegally simply
16 means that the act which the defendant is
17 doing is prohibited by law.

18 Now, a person advances gambling
19 activity when acting other than as a player
20 and he engages in conduct which materially
21 aids any form of gambling activity.

22 A person profits from gambling
23 activity when other than as a player, he
24 accepts or receives money or other property
25 pursuant to an agreement or understanding

1 with any person, whereby he participates or
2 is to participate in the proceeds of gambling
3 activity.

4 Now, a player means a person who
5 engages in any form of gambling solely as a
6 contestant, or better, without receiving or
7 becoming entitled to receive any profit
8 therefrom, other than personal gambling
9 winnings, and without otherwise rendering any
10 material assistance to the establishment,
11 conduct or operation of the particular
12 gambling activity.

13 Thus a person who gambled at a
14 social game of chance on equal terms with the
15 other participants does not otherwise render
16 material assistance to the establishment,
17 conduct or operation thereof by performing
18 without fee or remuneration, acts directed
19 toward the arrangement or the facilitation of
20 the game, such as inviting persons to play,
21 permitting the use of the premises thereof,
22 and supplying cards or other equipment used
23 therein.

24 A person who engages in book-
25 making is not a player. Bookmaking means

1 advancing gambling activity by unlawfully
2 accepting bets from members of the public
3 as a business rather than in a casual or
4 personal fashion upon the outcome of future
5 contingent events.

6 Now, the term business, as used
7 in these laws, is to be given its ordinary
8 normal meaning. In a sport bookmaking opera-
9 tion, and parlay business, when accepting
10 business from members of the public it is an
11 illegal gambling business prohibited by New
12 York law.

13 Now, the mere fact, however,
14 that you may find that one or more of the
15 defendants was operating an illegal gambling
16 business in violation of New York law is not
17 enough to find any defendant guilty. Before
18 you can convict any defendant of violating
19 the federal law applicable here, you must
20 find two other facts. One of these, the
21 second fact which the government must prove
22 beyond a reasonable doubt, is that the illegal
23 gambling business involved five or more persons
24 who conducted, financed, managed, supervised,
25 directed or owned all or part of such business.

1 The word "conduct" means to carry
2 on or to operate, or to cause to function,
3 and refers to both high level bosses, and to
4 street-level employees. It includes all
5 levels of personnel who participate in an
6 illegal gambling business, regardless of how
7 minor their roles, and whether or not they are
8 called writers, directors, runners, clerks,
9 or employees. It includes agents or middle-
10 men who accept bets from others, and pass
11 them along to a single, central gambling
12 business. It includes otherwise outside
13 bookmakers who accept bets from their own
14 customers, and lay them off to a single central
15 operation on a regular, ongoing, consistent
16 and substantial basis.

ERROR
See GURZEK

17 It does not include anyone,
18 including an outside or independent bookmaker
19 who places a single, or isolated bet for his
20 own customer, or who makes isolated and
21 casual, rather than substantial and regular
22 lay-off bets, or who occasionally exchanges
23 line information with the central gambling
24 operation.

25 In short, a conductor includes

1 all persons who participate in the operation
2 of a gambling business, including those who
3 participate in a network composed of other
4 bookmakers, who join in a cooperative and
5 consistent ongoing relationship with a single
6 central gambling enterprise, and pool their
7 bets, either through fairly regular layoffs,
8 or profit sharings, or consistently and
9 continually share line information, or
10 systematically transfer a substantial amount
11 of business, or part of the action, or give
12 advice concerning gambling operation.

13 However, the bettor, player or
14 customer of an illegal gambling business does
15 not conduct the illegal gambling business,
16 even though he engages in the illegal
17 gambling activity, by placing a bet or bets,
18 *OK* and even though he may be a regular and even
19 a daily customer of the gambling business,
20 and notwithstanding the fact that he may play
21 or bet large amounts of money.

22 The federal law is not aimed at
23 the bettor, at the player or the customer, but
24 at those who conduct the illegal gambling
25 business.

1 Now, to finance means to supply
2 the capital or the financial backing or money
3 to establish or operate or run the business.
4 Manage means to run the business, to have
5 charge of, to direct or to have an important
6 voice in the direction and policies of the
7 business. Supervise means to oversee or
8 boss the operation. Direct means to guide or
9 control or run. Own means to have ownership
10 or title in some demonstrable way, such as a
11 share in the profits of the business.

12 Now, you will notice that in
13 stating the acts such as conduct, supervise,
14 finance, and so forth which are prohibited by
15 the statute, I have used the word "or" he
16 must conduct, "or" supervise, or finance, or,
17 and so on. It is not necessary, therefore,
18 for the government to prove that the defendant
19 whom you are considering did all of these
20 prohibited acts. It is not in itself enough
21 to define that he knowingly did any one of
22 them nor is it necessary for the government to
23 prove that five or more persons did all of the
24 prohibited acts.

25 For example, it would be

1 sufficient if the government proved, beyond
2 a reasonable doubt, that three persons con-
3 ducted the gambling business, and that two
4 others financed it; that would give you the
5 requisite.

6 The government contends that all
7 of the defendants now on trial, plus James V.
8 Colucca and Leon Cook, for a total of eight
9 persons do either conduct or finance or
10 manage, or supervise, or direct, or owned,
11 all or part of the gambling business. And
12 it is for you to decide whether that is a
13 fact.

14 The third fact which the govern-
15 ment must prove beyond a reasonable doubt is
16 that the illegal gambling business was a
17 gambling business which had been or remained
18 in substantially continuous operation for a
19 period in excess of 30 days, or that it
20 received profit of more than \$2,000 in any
21 single day.

See p. 47, infra,
for correction
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22 Now, the government contends
23 that the evidence shows that the sport book-
24 making operation and parlay business involved
25 here was in substantially continuous operation

1 from about September 1 of 1973 through June
2 30, 1975. Substantially continuous operation
3 for more than 30 days does not mean that the
4 business must operate every single day for
5 at least 31 consecutive days, or that it must
6 necessarily operate in the same location.
7 Rather it means that the same illegal gambling
8 business must operate on a regular basis,
9 even at many different locations, for a
10 period in excess of 30 days.

11 Now, you must consider all of the
12 evidence for each and every defendant
13 separately. If, as to the defendant whom you
14 are considering, you find that the government
15 has failed to prove beyond a reasonable doubt
16 each of the three facts which I have instructed
17 you that the government is required to prove,
18 then you must find that defendant not guilty
19 on Count II.

20 On the other hand if, as to the
21 defendant whom you are considering, you find
22 that the government has proved beyond a
23 reasonable doubt all three of the facts which
24 I have instructed you that the government is
25 required to prove, then you should convict that

1 defendant on Count II.

2 We will now turn to Counts III,
3 IV and V.

4 The law involved in these counts
5 makes it a crime for any person to use any
6 facility such as a telephone in interstate
7 commerce with the intent to promote, manage,
8 establish, carry on or facilitate the pro-
9 motion, management and establishment or
10 carrying on of any business enterprise in-
11 volving gambling which operates in violation
12 of state or federal law and their effort to
13 perform or attempt to perform any act of
14 promoting, managing, establishing, or carrying
15 on or facilitating the promotion, management,
16 establishment or carrying on of the gambling
17 enterprise.

18 Each of Counts III through V
19 charge that the defendant D'Agostino and
20 Camerano violated this law by using telephone
21 facilities between the State of Nevada and
22 the State of New York, to disseminate sports
23 line information for gambling enterprise
24 which was operating in violation of the state
25 and federal law. These counts also charge

1 that the defendant Grezo aided and abetted
2 D'Agostino in committing the crime.

3 Specifically, Count III alleges
4 such a telephone call between D'Agostino and
5 Camerano on or about January 4, 1975 at
6 approximately 12:28 p.m.

7 Count IV alleges such telephone
8 call between those two defendants on or about
9 January 4, 1975 at approximately 5 p.m.

10 And Count V alleges such a
11 telephone call between those two defendants
12 on or about January 5 at approximately 12:30
13 p.m.

14 Now, with respect to Counts III
15 through V, you again must consider each count,
16 and each defendant named in that count separ-
17 ately. We will first consider D'Agostino
18 and Camerano.

19 In order to convict either or both
20 of them on the count which you are considering,
21 the government must prove the following three
22 facts beyond a reasonable doubt: First, that
23 the defendant used a telephone facility to
24 talk to someone in another state with the intent
25 to promote or to facilitate the promotion,

1 management, establishment or carrying on of a
2 business enterprise involving gambling.

3 Now, here it is not necessary
4 for the government to prove that the defendant
5 had knowledge that the telephone call was from
6 out of state or that he knew that by making
7 or accepting the call he was violating the law.

8 However, with respect to the
9 defendants' intent, it is necessary for the
10 government to prove that the interstate
11 facility, and here an interstate telephone
12 facility, was in fact used and that the
13 defendant used it, or caused it to be used,
14 and that he intended to promote, or to fa-
15 cilitate the promotion, management, establish-
16 ment of or carrying on of illegal gambling
17 activity.

18 You will notice again that I used
19 the word "or", in using the prohibited acts
20 and the prohibited intent. The government
21 need, therefore, to only prove that the
22 defendants' intent was to do any of the things
23 that I have listed.

24 Now, the government contends
25 that the purpose of this interstate telephone

1 call between Nevada and New York was to dis-
2 seminate line information. It is sufficient,
3 if you find that the defendant intended --
4 that the purpose of the line information was
5 to facilitate or in any way help or further
6 the gambling activity. It is not necessary
7 that the government prove that the line in-
8 formation was absolutely essential to the
9 operation of the gambling activity.

10 The second fact which the govern-
11 ment must prove beyond a reasonable doubt as
12 to each of Counts III through V is that the
13 gambling enterprise was in violation of either
14 federal law or state law. Here you will
15 recall and apply my earlier instructions on
16 those subjects in discussing Count II. That
17 is, that in the State of New York a person is
18 guilty of promoting gambling if he advances
19 or profits from gambling activity and that
20 advancing gambling activity essentially is
21 any kind of conduct in any phase of the gambling
22 operation, no matter how small or low level,
23 except that of a bettor or player.

24 Disseminating or receiving line
25 information for a gambling business is

1 advancing gambling activity under this law.

2 You will also recall my earlier
3 instructions as to what kind of gambling
4 enterprise is in violation of the law of the
5 United States, and if you find in Count II
6 that such an illegal gambling business existed,
7 then that finding alone will satisfy the
8 second fact with respect to Counts III through
9 V.

10 The third fact which the govern-
11 ment must prove beyond a reasonable doubt as
12 to each of Counts III through V is that after
13 the alleged interstate telephone conversation,
14 the defendant knowingly performed or attempted
15 to perform any act of promoting or of fa-
16 cilitating the promoting, management, es-
17 tablishment or carrying on of a business enter-
18 prise involving gambling. Here, again, you
19 will note that I have used the word "or".
20 The government need only prove any single
21 prohibited act in furtherance of the gambling
22 enterprise in order to satisfy this third
23 fact.

24 Now, in discussing Counts III
25 through V we have been referring only to the

1 defendants D'Agostino and Camerano who are
2 alleged to be the actual participants in each
3 of the three interstate telephone calls.
4 Under the law, D'Agostino and Camerano are
5 called "principals" in the criminal defense.

6 We will now discuss the defendant
7 Grezo, who is named as an aider and abettor
8 in each of Counts III through V.

9 The government contends that
10 Grezo aided and abetted in the offense charged
11 in each of Counts III through V, by discussing
12 line problems with D'Agostino and by using
13 the line information provided to him by
14 Camerano, through D'Agostino. The government
15 does not have to prove that Grezo was a
16 participant in any interstate telephone call,
17 or that Grezo had knowledge that an interstate
18 facility was being used.

19 The defendant Grezo contends
20 that he was simply obtaining line information
21 in order to play the middle, and that he was
22 a mere player. That issue is for you to
23 decide.

24 The law provides that a person
25 who aids and abets, counsels, commands, induces

1 or procures the commission of a crime by
2 another is just as guilty of that crime as
3 if he committed it himself.

4 Accordingly, you may find the
5 defendant Grezo guilty of the crime charged
6 in the count which you are considering, if
7 you find beyond a reasonable doubt that he
8 aided and abetted D'Agostino in the commission
9 of the crime charged in that count, and that
10 he was acting other than as a player in
11 seeking or using line information.

12 Before you can convict Grezo for
13 aiding and abetting you must find that the
14 crime charged in the count which you are
15 considering was committed by another, here
16 D'Agostino, and that Grezo continually as-
17 sociated himself with the criminal venture,
18 with the intent that his conduct would help
19 it succeed.

20 You must be convinced beyond a
21 reasonable doubt that Grezo was knowingly and
22 intentionally doing something to aid the crime
23 or to forward the crime of the other person;
24 here D'Agostino, and that Grezo was a knowing
25 participant in the crime, with a stake in its

1 success, rather than a mere witness, player,
2 spectator or bystander on the scene of a crime
3 when it was committed by another; D'Agostino.

4 With respect to each of Counts
5 III through V you must consider all of the
6 evidence with each count, and each defendant
7 separately. As to the defendants, D'Agostino
8 and Camerano, if you find as to the defendant
9 whom you are considering that the government
10 has failed to prove beyond a reasonable doubt
11 each of three facts which I have instructed
12 you it is required to prove, then you must
13 acquit that defendant on that count.

14 On the other hand, as to the
15 defendants D'Agostino and Camerano, if you
16 find that the government has proved beyond a
17 reasonable doubt all three of the facts which
18 I have instructed you it is required to prove,
19 then you may convict that defendant on that
20 count.

21 As to the defendant Grezo, if
22 you find that the government has failed to
23 prove beyond a reasonable doubt each of the
24 three facts which I have instructed you it is
25 required to prove, as to the defendant

1 D'Agostino on the count which you are con-
2 sidering, or that the government has failed
3 to prove that Grezo knowingly aided and abetted
4 another, D'Agostino, in the commission of the
5 crime, then you must find Grezo not guilty on
6 that count.

7 On the other hand, as to the
8 defendant Grezo, if you find that the govern-
9 ment has proved beyond a reasonable doubt all
10 three of the facts which it is required to
11 prove as to the defendant D'Agostino on the
12 count which you are considering, and that the
13 government has proved that Grezo knowingly
14 aided and abetted D'Agostino in the commission
15 of the crime, then you may convict the defend-
16 ant Grezo on that count.

17 We will now turn to the first
18 count of the indictment which charges a
19 conspiracy.

20 Count I charges the six defendants
21 now on trial, together, and with each other,
22 and with James V. Colucca and Leon Cook, who
23 are named as co-conspirators, and with numerous
24 other persons whose exact identity are to the
25 Grand Jury unknown, with conspiring to conduct,

1 finance, manage, supervise and own all or
2 part of an illegal gambling business.

3 Here again you must consider
4 each defendant separately. In order to
5 convict the defendant whom you are considering
6 on Count I, the government must prove the
7 following three facts beyond a reasonable
8 doubt: First, the existence of a conspiracy
9 as charged in the indictment. Sometime
10 between September 1, 1973 and June 26, 1975,
11 in the Northern District of New York, for
12 the purpose of committing a crime of con-
13 ducting, financing, managing, supervising,
14 directing, financing or owning all or part
15 of an illegal gambling business as I have
16 defined that crime in my discussion of
17 Count II; specifically the government must
18 prove the existence of a conspiracy which
19 contemplated the crime of conducting an il-
20 legal gambling business which was prohibited
21 by the law of New York, which involved or
22 would involve five or more persons, and
23 which was intended to continue in operation
24 for more than 30 days, or to have a gross
25 revenue of at least \$2,000 in any single day.

1 Second, that the defendant whom
2 you are considering joined the conspiracy with
3 knowledge of its illegal purpose.

4 Third, any member of the conspiracy
5 admitted at least one of the overt acts set
6 forth in the indictment. I will now discuss
7 what these facts mean.

8 The first fact with which the
9 government must prove beyond a reasonable
10 doubt is the existence of the conspiracy.
11 Now, what is a conspiracy? A conspiracy,
12 for our purposes, is simply a combination or
13 an agreement among two or more people to violate
14 the law as charged in this indictment. Thus,
15 a conspiracy is a kind of a partnership in
16 criminal purposes and it is usually secret
17 in its origin and in its execution.

18 The gist of the crime is the
19 combination or agreement among two or more
20 people to violate the law. This does not
21 mean that two or more persons must meet and
22 sign some kind of an agreement or that they
23 must sit down and agree in so many words on
24 what their unlawful scheme is to be, or how
25 they are going to carry it out.

1 When persons enter into a com-
2 bination or agreement to violate the law only
3 fools would put it in writing. Much is
4 necessarily left to implicit understanding
5 and tacit understanding. Conspirators do not
6 proclaim their plots, or publicly announce
7 their purpose. The very nature of a con-
8 spiracy calls for secrecy and intrigue.

9 The first fact is satisfied,
10 therefore, if you find beyond a reasonable
11 doubt that any two or more people in any way
12 intentionally combine, or agree to a common
13 plan knowingly and intentionally to conduct,
14 finance, manage, supervise, direct or own
15 part of an illegal gambling business pro-
16 hibited by New York law involving five or
17 more people and intended to continue for
18 more than 30 days, or to have a gross revenue
19 of at least \$2,000 in any single day.

20 Now, in determining whether
21 there was such a combination or understanding
22 or agreement here, you should consider all of
23 the evidence about each defendant's conduct
24 and station. You should consider not only
25 what was said or done, but also how it was

1 said or done. From the point of view of the
2 law, there is danger to the public when two
3 or more people combine to do something that
4 is unlawful. The danger is greater than if
5 the lone criminal acts by himself because
6 in numbers there is strength, and with two
7 or more people they are able to accomplish
8 crimes that are more difficult and more harmful
9 to the public.

10 Because of this, a conspiracy to
11 commit a crime is a distinct crime in and of
12 itself, separate and apart from the crime
13 which it is the object of the conspiracy to
14 accomplish. In other words, the agreement
15 to enter into this illegal gambling business
16 in and of itself is a crime, whether or not
17 the defendants ever actually carried out
18 their plan, whether or not they ever, in
19 fact, entered into an illegal gambling
20 business. Thus you may find that a conspiracy
21 exists, even though the purpose of the
22 conspiracy is never accomplished.

23 Proof, however, of the accomplish-
24 ment of the purpose of the conspiracy is prob-
25 ably the most persuasive evidence of the

1 existence of the conspiracy, itself. The
2 period of time charged in the crime here
3 runs from September 1, 1973 through June
4 26, 1975.

5 It is not necessary for the
6 government to prove that the conspiracy
7 alleged started or ended on those specific
8 dates. It is sufficient if you find that
9 the conspiracy was formed, and that it existed
10 for some substantial time within the period
11 set forth in the indictment.

12 Now, you will recall that the
13 third fact which the government must approve
14 beyond a reasonable doubt -- the second fact
15 which the government must prove beyond a
16 reasonable doubt is that the defendant joined
17 in the conspiracy with knowledge of its il-
18 legal purpose.

19 When I say joined the conspiracy,
20 I do not mean that the defendant has to file
21 some kind of an application, or that he has
22 to sit down and say, "Let me in" or anything
23 of that nature. However, before one can be
24 found to be a member of a conspiracy he must
25 know of the existence of the conspiracy, and

1 of its unlawful purpose, to conduct an il-
2 legal gambling business as charged in this
3 indictment and as I have defined the crime of
4 conducting an illegal gambling business in our
5 discussion of Count II, and he must voluntarily
6 and knowingly join in the plan with an intent
7 to combine with others to violate the law, and
8 he must knowingly promote the scheme, or have
9 some kind of a stake in its success.

10 In this connection, you will
11 recall my earlier instructions as to what
12 constitutes knowledge, willful and intentional
13 conduct in discussing Count II, and apply those
14 instructions here.

15 Here in determining the knowledge
16 and intent of the defendant, it is obviously
17 impossible to look into his mind. However,
18 intent and knowledge may be inferred from the
19 way a defendant acts, by his statements, and
20 by all the surrounding circumstances. Thus
21 the old adage "Actions speak louder than words"
22 applies here.

23 In this connection you may not
24 rely upon the statement of one defendant to
25 find that another defendant was a member of a

1 conspiracy. You must determine the membership
2 of a particular defendant solely from the
3 evidence concerning his own actions, his
4 own conduct, his own statements.

5 The mere fact that a defendant
6 may witness a crime, or be present when a
7 crime is committed by others, or that he
8 may attend a meeting or unwittingly assist
9 the criminal venture, or have an association
10 or friendship with a member of a conspiracy,
11 or even though he participates in an isolated
12 gambling transaction with a member of a
13 conspiracy is not, in itself, enough to make
14 him a conspirator unless you first find,
15 beyond a reasonable doubt, that he knew of
16 the conspiracy and that he deliberately and
17 intentionally joined in the criminal venture
18 with knowledge of its unlawful purpose, and
19 with a stake in its success.

20 Now, one may become a member of
21 a conspiracy without knowledge of all of the
22 details, or all of the operations of the
23 conspiracy. One defendant may know only one
24 other member of the conspiracy. Yet if he
25 knowingly cooperates to further the illegal

1 purpose of the conspiracy, with knowledge
2 that others have joined together to violate
3 the law, he becomes a member, although his
4 role may be only an insignificant or minor
5 one.

6 Now, if you find that a defendant
7 did join the conspiracy with knowledge of its
8 illegal purpose, then he is bound by what
9 others say and do in furtherance of the
10 object of the conspiracy, even though he is
11 not present, provided he is still a member.
12 You will remember that each conspirator is
13 the aider-partner of agents or parties of
14 every other conspirator.

15 What one does to promote the
16 illegal plan or illegal agreement binds every
17 other member of the conspiracy.

18 Now, the third fact which the
19 government must prove beyond a reasonable
20 doubt is the commission by any conspiracy to
21 have at least one overt act in furtherance of
22 the object of the conspirators. An overt
23 act means any act by any member of the
24 conspiracy in an effort to accomplish some
25 purpose of the conspirators.

1 The reason the law of conspiracy
2 requires an overt act is because a person
3 might agree to commit a crime, and then
4 change his mind. Therefore, before a defendant
5 can be convicted of a conspiracy, one or more
6 of the conspirators must have taken at least
7 one step or performed at least one single act
8 toward carrying out the unlawful intent to
9 commit the crime. That step may, in itself,
10 be perfectly innocent.

11 The indictment in this case
12 enumerates seven overt acts allegedly done
13 in the furtherance of the conspiracy in order
14 to affect the objects of the conspiracy, and
15 they are one, that on or about October 30th,
16 1974, Samuel Ebare and James J. Colucca met
17 in the Chart Room, in Oswego, New York, and
18 had a discussion concerning a debt.

19 Two, on or about November 5th,
20 1974, Joseph D'Agostino spent approximately
21 one and a half hours at the residence of Leon
22 Cook at 214 Golf Road, Syracuse, New York,
23 conducting the aforesaid illegal gambling
24 business over Cook's telephone.

25 Three, on or about the December

1 21, 1974, Joseph T. D'Agostino had a telephone
2 conversation with Charles T. Grezo about
3 matters relating to the operation of the
4 aforesaid illegal gambling business in which
5 D'Agostino accepted lay-off wagers from
6 Grezo.

7 Four, on or about January 3, 1975,
8 Joseph T. D'Agostino distributed line or order
9 information over the telephone to Raymond
10 Czerwinski, and they discussed other matters
11 relating to the operation of the aforesaid
12 illegal gambling business.

13 Five, on or about January 4, 1975,
14 Richard Michael Beach and Joseph T. D'Agostino
15 had a telephone conversation in which they
16 discussed the status of the aforesaid illegal
17 gambling business concerning a particular game,
18 and during which D'Agostino gave Beach the
19 line, or odds information on numerous sporting
20 events.

21 Six, on or about January 5, 1975,
22 Louis M. Camerano telephoned Joseph D'Agostino
23 from Las Vegas, and Camerano gave D'Agostino
24 line or odds information on numerous sporting
25 events for use in the aforesaid illegal

1 gambling business.

2 Seven, on or about January 6,
3 1975, Joseph T. D'Agostino and Samuel Ebare
4 had a telephone conversation and Samuel Ebare
5 gave Joseph T. D'Agostino instructions with
6 respect to the pay-off of a winning bettor
7 in the aforesaid illegal gambling business,
8 and they arranged a meeting.

9 Now, the government contends
10 that the meetings and telephone calls referred
11 to in these overt acts have been proved beyond
12 a reasonable doubt from the tape recordings,
13 and some physical surveillance by FBI agents.
14 That, of course, is for you to decide.

15 You will note that the overt acts
16 charged are innocent in and of themselves.
17 Nevertheless, if an overt act was performed
18 by any member of the conspiracy during the
19 existence of the conspiracy, and in furtherance
20 of its unlawful purpose, then that act was
21 sufficient to satisfy the government's burden
22 of proving the third fact.

23 The government must prove to you
24 beyond a reasonable doubt that at least one
25 of the overt acts which I have just read to

1 you was committed by one or more of the
2 conspirators and that that act was done
3 in furtherance of the conspiracy.

4 Now, in this connection, the
5 government does not have to prove that all
6 of the defendants committed an overt act,
7 or that all of the overt acts were committed.
8 It is required that they prove one overt act
9 by any one member of the conspiracy.

10 Likewise, it is sufficient if the
11 dates alleged in the overt act are substantial-
12 ly within a few weeks of the date mentioned
13 in the testimony. The same is true as to the
14 place mentioned in the overt acts. It must
15 be substantially similar. There is no re-
16 quirement that it be exactly as alleged in
17 the indictment.

18 With respect to Count I, there-
19 fore, you must consider all of the evidence
20 and each defendant separately. If, as to the
21 defendant whom you are considering, you find
22 that the government has failed to prove beyond
23 a reasonable doubt each of the three acts
24 which I have instructed you that it is re-
25 quired to prove, then you must acquit that

1 defendant on Count I.

2 On the other hand, if as to the
3 defendant whom you are considering, you find
4 that the government has proved beyond a
5 reasonable doubt all three of the acts which
6 I have instructed you it is required to
7 prove, then you should convict that defendant
8 on Count I.

9 You are instructed that the
10 question of possible punishment of a
11 defendant in the event of a conviction is
12 no concern of yours, and it should not enter
13 into or influence your deliberations in any
14 way. The duty of imposing sentence, in the
15 event of a conviction, rests exclusively upon
16 the Court. The function of the jury is to
17 weigh the evidence in the case, and determine
18 the guilt or non-guilt of the defendant solely
19 upon the basis of that evidence.

20 When you retire to the jury room,
21 you should elect one of your number to serve
22 as your foreman or forelady, and to address
23 whatever communications, or to announce your
24 verdict to the Court.

25 Treat one another with consideration

1 and respect, as I know that you will. If
2 differences of opinion arise, your discussions
3 should be dignified, calm and intelligent.
4 Your verdict must be based on the evidence
5 and the law. The evidence which was presented
6 in this case as you collectively remember it,
7 and the law as I have given it to you in this
8 charge.

9 You are each entitled to your
10 own opinion. No juror should acquiesce in
11 a verdict against his individual judgment.
12 Nevertheless, I would point out that no one
13 should enter the jury room with such pride
14 of opinion that he would refuse to change
15 his or her mind, no matter how convincing
16 or how persuasive, or how intelligent the
17 argument of another juror or jurors.

18 Discussion and deliberation are
19 at the very heart of our American jury process,
20 and your deliberations should be approached
21 in that spirit. Talk out your differences.
22 Each of you should, in effect, decide the
23 case for him or herself, after thoroughly
24 reviewing the evidence, and frankly discussing
25 it with your fellow jurors, with an open mind,

1 and with a desire to reach a verdict. If
2 you do that, you will be acting in the true
3 democratic process of the American jury system.

4 There are 12 of you on this jury.
5 The alternate juror will be excused before
6 you retire for your deliberations. Any
7 verdict must be the unanimous verdict of all
8 of you as to each defendant and each count
9 in which that defendant is named, and it
10 must represent the honest conclusion of each
11 of you.

12 I submit the case to you with
13 every confidence that you will fully measure
14 up to the oath which you took as members of
15 the jury to decide the issues submitted to
16 you fairly and impartially, and without
17 fear or favor.

18 And to guide you in your delibera-
19 tions, I will send in a copy of the indictment.

20 Now, I submit the case to you
21 with every confidence that you will fully
22 measure up to your oath.

23 Now, members of the jury, if you
24 find that the government has failed to es-
25 tablish the guilt of any defendant beyond a

1 reasonable doubt, you should find that
2 defendant not guilty.

3 If you find that a defendant has
4 not violated the law, you should not hesitate,
5 for any reason, to render a verdict of not
6 guilty as to him.

7 But on the other hand, if you
8 find that the government has established the
9 guilt of the defendant beyond a reasonable
10 doubt, you should not hesitate, because of
11 sympathy or any other reason, to render a
12 verdict of guilty.

13 Your foreman or forelady then
14 will return a verdict, an oral verdict in
15 open court of the guilt or non-guilt as to
16 each defendant on each count in which that
17 defendant is named.

18 Are there any exceptions,
19 gentlemen? If so, I will hear you at the
20 bench.

21 MR. FISHER: Your Honor, could
22 we approach the bench for a moment, please?

23 (Whereupon, the following took
24 place at the side bar, out of the hearing of
25 the jury.)

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MR. FISHER: Your Honor, I do not have any exceptions but on Count II, when the count was explained as to the 30 days or \$2,000, you hesitated there, and you used the word "profit," and you said, "\$2,000 profit" and I would ask the Court to clarify that as to revenue and it would be \$2,000 gross revenue.

THE COURT: Thank you.

(Whereupon, the following took place before the Court and the jury.)

THE COURT: In discussing Count II I said that the business in continuous operation for more than 30 days, and then I said, "or had a profit of \$2,000." I am in error. It is gross revenues of \$2,000, in any single day.

(Whereupon, the marshals were sworn by the clerk.)

* * *

United States District Court

DEFENDANT Charles P. Grezo Northern District of New York

DOCKET NO. 75-CR-86

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 221 (7/71)

COUNSEL In the presence of the attorney for the government the defendant appeared in person on this date September 17, 1976

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL Norman A. Palmiere (Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of unlawfully did conduct, finance, manage, supervise, direct and own an illegal gambling business. In violation of T18, USC §§1955 and 2.

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) months and is fined \$5,000.00 on Count 2. Defendant is to stand committed until the fine of \$5,000.00 is paid.
On motion of Attorney Norman A. Palmiere execution of sentence is stayed pending appeal. Defendant is continued on his own recognizance.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY ☒ U.S. District Judge Lloyd F. MacMahon
☐ U.S. Magistrate

Date 9-17-76